

White House Plan for Closing the Guantanamo Bay Detention Facility

There has been bipartisan support for closing the Guantanamo Bay detention facility but restrictions in current law have made it almost impossible to transfer detainees to other countries even when our counterterrorism and law enforcement professionals determine we can responsibly do so. Those same restrictions prohibit the prosecution of detainees in federal court or their detention even in a supermax federal prison. As President Obama has said, these restrictions should be repealed but in the meantime, the Administration is doing all it can to close the facility.

Current Detainee Population:

- The Administration has transferred 71 detainees from Guantanamo Bay since January 2009, of which 67 were transferred prior to legislative restrictions enacted by Congress beginning in 2011. The United States spends approximately \$150 million each year to detain the remaining 166 detainees:
 - 86 are eligible for transfer (including 30 Yemenis in conditional detention).
 - 46 have been approved for continued law of war detention.
 - 31 have been designated for possible prosecution in federal court or a military commission.
 - 3 have been convicted, two of whom are serving sentences, and one of whom is awaiting sentencing.

Measures to Reduce the Population and Close the Detention Facility:

- *Detainee Transfers.* The principal way the Administration will reduce the detainee population at Guantanamo Bay is by transferring detainees back to their home countries – or, where that is not possible, to third countries willing to accept them. Restrictions in current law significantly limit the Administration’s ability to transfer detainees, and the President has called for their repeal. None of these restrictions were in place when more than 600 detainees were transferred out of Guantanamo Bay from 2002 to 2011. Until these restrictions are repealed or reformed, the President has directed the Administration to transfer detainees to the greatest extent possible. In furtherance of the President’s directive, the Administration is working hard to complete a number of detainee transfers in 2013.
- *Special Envoys.* In June, Secretary of State John Kerry appointed Clifford Sloan to serve as the State Department’s Special Envoy for Guantanamo Closure. The Department of Defense will soon also select a Special Envoy. Mr. Sloan has begun meeting with foreign governments to negotiate potential detainee transfers and has traveled to Guantanamo Bay.
- *Lifting Yemen Moratorium.* The President lifted the Executive Branch moratorium on transfers to Yemen on May 23, 2013. The Administration will evaluate Yemeni detainees on a case-by-case basis, and is engaged with the Yemeni government to facilitate the conditions that would enable the repatriation of Yemeni detainees who have been designated for transfer.
- *Periodic Review Boards.* As directed in Executive Order 13567, the Administration has implemented a Periodic Review Board (PRB) process to review whether certain detainees designated for law of war detention continue to pose a significant threat to the security of the United States. Counsel for the first two detainees receiving PRB hearings have been notified and additional notices and hearings will follow on a rolling basis.
- *Prosecution and Detention.* The U.S. Government will prosecute detainees in federal courts or military commission proceedings to the extent feasible and in the national security interest. The President has directed the Department of Defense to identify a site in the United States for military commission proceedings. But current law bars the transfer of detainees to the United States for *any* reason. As a result, the Government is prohibited from prosecuting any detainees in a military commission in the United States or in a federal court, even if it represents the best – or only – option for bringing a detainee to justice. This is true even though the Government has successfully prosecuted more than

490 terrorism-related cases in federal courts since 9/11. For those not prosecuted, the Administration will use the PRB process to regularly and carefully review the threat posed by detainees and, where appropriate, they will be designated for transfer.

Current Transfer Restrictions:

- Current law bars detainee transfers to foreign countries except under the most limited of circumstances and through issuance of a certification by the Secretary of Defense. The difficulty in satisfying the certification requirements is reflected in the low number of transfers over the last two and a half years. Before these restrictions took effect, the Administration transferred 67 detainees; afterwards, it transferred four, and only because those four fell within a narrow exception in the law for court-ordered releases or plea agreements.
- Current law prohibits transfers to any countries that have previously received even one detainee who has reengaged in terrorism activities following transfer – a prohibition that applies to even our strongest allies.
- Current law allows the Secretary of Defense to waive some – but not all – of the transfer restrictions, and even then, imposes alternative restrictions to replace any that are subject to a waiver. As a result, the Administration’s ability to transfer detainees is significantly limited even if the waiver provisions are exercised.
- Current law bars the transfer of detainees to the United States *for any reason* – making prosecution in federal court impossible even if it is the only option for prosecuting detainees. Current law also bars the Department of Defense from transferring detainees convicted in military commissions to federal prisons to serve their sentences. All of this despite the long record of our prosecutors, courts, and prisons convicting hundreds of terrorists and holding them safely.

Additional Flexibility:

- While the Administration believes that the transfer restrictions should be *eliminated entirely*, the detainee provisions in the Senate Armed Services Committee’s mark-up of the Fiscal Year 2014 National Defense Authorization Act are a marked improvement over current law. These provisions would give the Administration additional flexibility necessary to responsibly reduce the detainee population and close the detention facility. For example, they would:
 - Allow for the transfer of individuals to the United States for detention and trial, where appropriate – which is more effective, cost efficient, and promotes our national security interests. The Department of Defense estimates that we must spend another \$200 million (in addition to the aforementioned \$150 million each year) to keep the detention facility at Guantanamo Bay open at a time when our Armed Forces are struggling with sequestration and budget cuts.
 - Give the Administration more flexibility to transfer detainees to other countries when our counterterrorism and law enforcement professionals assess we can responsibly do so – as was the case during the Bush Administration and in this Administration before the transfer restrictions were enacted.
 - Allow the Administration to address certain compelling and anomalous situations – for example, current law prohibits the transfer of a detainee whose significant medical problems have reduced the threat he poses to such a low level that transfer is clearly appropriate, but nevertheless he cannot be repatriated to his home country.
 - Facilitate the closure of the Guantanamo Bay detention facility, the existence of which plagues our bilateral and multilateral relationships, creates friction with governments whose nationals we detain, provides cover for regimes whose detention practices we oppose, and provides our enemies with a symbol used to foster anti-U.S. sentiments around the world.